

of standard measures of market concentration, such as the Herfindahl-Hirschman Index, to LEC-dominated local telephone markets confirms the presence of near-total monopoly.⁴⁰ Indeed, MacAvoy could not have applied "market contestability" or "addressability" concepts to IXC's, because his thesis — that the IXC market is not competitive despite the fact that the largest firm has only a 60% market share — would be completely vitiated. Similarly, the LECs would not want to utilize MacAvoy's method for assessing competition with respect to their own highly dominated local services markets, because an almost complete absence of actual competition would be confirmed.

Indeed, in the very same study, MacAvoy offers his assessment as to the likelihood of additional competition in the long distance market, in which he denies any possibility of contestability:

The reality that now shapes markets for long-distance services is that the large established facilities-based carriers have a significant cost advantage over entrants and small carriers. The cost of rights of way and the labor to lay fiber optic cable stand as a significant barrier to further expansion of any other potential carrier in long-distance markets. Any one of the existing networks could carry all of the nation's long-distance traffic at lower cost than any new entrant. Any of the existing networks has a significant cost advantage over any potential entrant, so that the incumbent could repel any entrant from the long-distance market business simply by decreasing prices to marginal costs.⁴¹

⁴⁰ Where a LEC holds a 98% share and the remaining 2% are split among, say, three firms, the HHI would be approximately 9,600.

⁴¹ MacAvoy, at 41.

While TW Comm does not accept the factual basis for MacAvoy's assessment with respect to interexchange carriers (for example, the presence of LDDS in the long distance market undercuts MacAvoy's thesis), his identification of the formidable barriers confronting new entrants is clearly applicable with respect to local service markets, where the advantages of incumbency with respect to rights-of-way, existing pole lines and conduits, drop wires, and the like, are orders-of-magnitude greater than in the case of long distance service.

IV. THE PRIORITY OF THE COMMISSION SHOULD BE TO ENCOURAGE THE DEVELOPMENT OF COMPETITION RATHER THAN TO DEREGULATE THE LECs.

Contrary to the wishes of the incumbent carriers, the deregulation of the LECs should not occur in anticipation of a competitive market but rather as a consequence of a competitive market having been achieved. The limited resources of the FCC should be devoted to encouraging the development of competition in such proceedings as those that concern number portability,⁴² access charge reform, and the development of a competitively neutral universal service fund.⁴³ As discussed above, there is little to be gained and much to be lost by granting additional downward pricing flexibility, streamlined regulation, or nondominant regulation based upon a promise of competition rather than upon the reality of competition.

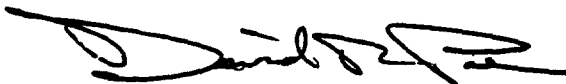
⁴² In re Telephone Number Portability, Notice of Proposed Rulemaking, 10 FCC Rcd 12350 (1995).

⁴³ See Comments of LDDS WorldCom, at 3, 6 and AT&T, at 5 ("the Commission should devote its resources to assuring that the preconditions to effective competition are in place in the access and local markets").

CONCLUSION

There is a resounding theme among the non-LEC comments that the deregulation contemplated in the Second Further Notice is premature, unnecessary, and anticompetitive. The Commission should clearly signal the marketplace that it has no intention of moving down the deregulatory path envisioned in the Second Further Notice until such time as there is firm evidence that fundamental changes in the marketplace warrant such lessening of price constraints. These fundamental changes should be measured in large part by CLEC market share and by the progress that is actually achieved in eliminating the significant and numerous barriers to entry in the local market.

Respectfully submitted,



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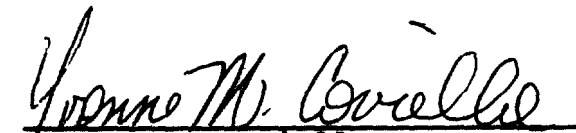
CERTIFICATE OF SERVICE

I, Yvonne M. Coviello, hereby certify that on this 16th day of January, 1996, a true copy of the foregoing Comments filed by Time Warner Communications Holdings, Inc., were Hand Delivered, upon each of the parties listed.

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